

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4994 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHETANKUMAR JAYANTILAL SHAH

Versus

DISTRICT SUPPLY OFFICER

Appearance:

MR VIJAY H PATEL for Petitioner
Mr. B.Y.Mankad, ASSTT. GOVERNMENT PLEADER for
Respondent.

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 12/11/97

ORAL JUDGEMENT

Rule. Mr. B.Y.Mankad, learned Assistant Government Pleader waives service of Rule on behalf of the respondents. Mr. Chetankumar Jayantilal Shah has filed the present petition to challenge the orders passed by the District Supply Officer on 24.11.1995 and by the

Deputy Secretary, Civil Supply Department on 21.1.97.

2. The petitioner is running a shop in the name of New Mahavir Trading Company and is dealing in essential commodities. On 27.5.1995, Food Inspector of Surat visited the shop as well as godown and at that time he found that the petitioner was not having stock registers, account books, bill books at the place of business as well as godown and he had also found other technical defects like incorrect entries in the licence at the place of business as well as place of godown. At the time of said visit, he had also found certain goods i.e. essential commodities which were seized by him. Thereafter, a show cause notice was issued to him on 9.5.95 to show cause as to why the said seized goods should not be confiscated to Government and why action should not be taken against him. He gave reply dated 21.11.1995. In the said reply, he had contended that the defects found at the time of inspection were on account of his ignorance and he had not done it intentionally. He had also explained that the stock register and other account books and bill books were in his house. The District Supply Officer, Surat by his order dated 24.11.1995 rejected his explanation regarding non-availability of stock register, other account books and bill books and taking into consideration that aspect and other facts, namely, the commission of other technical defaults passed an order to confiscate 50% of the essential commodities. Against the said order of the District Supply Officer, the petitioner preferred an appeal before Deputy Secretary, Civil Supply Department, Gujarat State, who heard his appeal and dismissed the same by confirming the order of the District Supply Officer by his order dated 21.1.1997 and hence, the petitioner has come before this Court.

3. It is vehemently urged before me by Mr. Patel, that the petitioner had committed only technical defaults and the confiscation of 50% of the goods is a harsh sentence. He urged before me that the District Civil Supply Officer as well as appellate authority were not justified in rejecting his explanation that stock register and other account bill books were at his residence. He urged before me that there is no allegation against the petitioner that he was dealing in black marketing and therefore, in the circumstances, the sentence of confiscating 50% of the goods is disproportionate.

4. There is no dispute of the fact that at the time of inspection, neither stock register nor any

account books nor bill books were found at the place of business as well as place of godown. No doubt, the petitioner has given explanation by saying that the same were at the residence of the petitioner, but that explanation given by him is rejected by both the authorities below. The said rejection of the explanation could not be said to be either perverse or illegal. The account books and bill books are to be kept at the place of business and not at the residence of the owner of the shop. Therefore, that finding of the authorities below will have to be accepted and there are no grounds to interfere with the said finding by exercising powers under Article 226 as well as 227 of the Constitution of India.

5. As regards other technical defects alleged to have been committed by the petitioner, there is no dispute and all those technical defects are not of serious nature. But merely because of the same, it could not be said that the petitioner should be let off by awarding penalty of small amount. In my opinion, the non-maintenance of stock register, account books and bill books at the place of business could not be taken as a technical defect or minor irregularity. No doubt, there is no specific allegation against the present petitioner that the petitioner was dealing in black-marketing, but merely because of the same, it could not be said that the petitioner deserves to be let off by awarding penalty of small amount. Taking into consideration the commission of non-maintaining of stock register, account books as well bill books, I hold that the order of confiscation of the goods to the extent of 50% should be reduced to 25%. Thus, I hold that the petition will have to be partially allowed and in place of the order passed by the District Civil Supply Officer of confiscating goods worth Rs. 28,913/-, the goods worth Rs.14,456/- is to be confiscated. Thus, Rule is made absolute accordingly with no order as to costs.

.....

***Darji